

## **REMARKS**

Applicants respectfully request reconsideration of the newly presented rejections of the claims of the instant application in view of the amendments above and the following remarks.

### **I. STATUS OF THE CLAIMS**

Claims 1, 3-7, 12-15, and 17-21 are presently pending and under consideration. Claims 8 and 9 are cancelled. Claims 1, 3, 4, 7, 10, and 17 are amended. Applicants reserve the right to file a divisional or continuing application on any non-pursued subject matter.

Claims 1, 10, and 17 are amended to recite that the extract of *Buchholzia coriacea* is obtainable by extracting at least a portion of the *Buchholzia coriacea* with a solvent selected from the group consisting of water, alcohol, and mixtures thereof to form a solution. Support for this amendment can be found at least in claim 7 as originally filed. Further support can be found in the substitute specification at least at page 7, lines 8-13.

Claim 7 is amended to remove redundancy of elements recited in claim 1 as presently amended, and to recite an embodiment in which the extract is a dry extract. Support for this amendment can be found at least in the substitute specification at least at page 6, lines 24-28. Applicants submit that the embodiment recited in claim 7 is necessarily a dry extract because the solvent is removed from the solution.

Claims 3 and 4 are amended to change the dependency from cancelled claim 2 to claim 1.

No new matter is presented. No new claims are added.

### **II. SUMMARY OF THE INVENTION AS CLAIMED**

The presently claimed invention, in one aspect, is directed to a cosmetic or dermatopharmaceutical composition comprising an extract of *Buchholzia coriacea* and at least one auxiliary and/or additive. The extract is present from a source and in an amount effective to (i) provide an anti-aging, anti-wrinkle, rejuvenating, and/or revitalizing effect on stressed or tired skin, (ii) promote the repair of aged and/or photo-

aged skin, (iii) provide an antioxidant effect and an appeasing and anti-irritation effect against oxidative stress and pollutants, and/or (iv) protect against UV or IR radiation. (See claims 1 and 3-7.)

According to another aspect, the presently claimed invention is directed to a method for the cosmetic treatment of the skin or scalp, comprising the step of administering to a patient in need thereof a composition comprising an effective amount of a plant extract from *Buchholzia coriacea*. The method further comprises inhibiting the synthesis of melanin, decreasing the effects of skin pigmentation, stimulating the growth and/or metabolism of human fibroblasts, providing an anti-aging and/or anti-wrinkle effect, providing a revitalizing or rejuvenating effect on stressed or tired skin, promoting the repair of aged and/or photo-aged skin, promoting hair growth or the delay of hair loss, providing an appeasing and anti-irritation effect against oxidative stress and pollutants, providing a protease inhibition effect, providing an antioxidant effect, and/or protecting against UV or IR radiation. (See claims 10, and 12-15.)

According to yet another aspect, the presently claimed invention is directed to a method for the treatment of skin inflammation comprising the step of administering to a patient in need thereof a composition comprising an effective amount of a plant extract from *Buchholzia coriacea*. For these claims the extract is obtained from the fruit and/or seed of *Buchholzia coriacea*. (See claims 17-20.)

Important to the invention is that the extract is obtainable by extracting at least a portion of the *Buchholzia coriacea* with a solvent selected from the group consisting of water, alcohol, and mixtures thereof to form a solution.

### **III. REJECTIONS OVER PRIOR ART**

The Examiner has rejected previously pending claims 10, 12, 13, and 17 under 35 U.S.C. § 102(a) as anticipated by Burkill. The Examiner states that Burkill discloses a method for the treatment of skin-eruptions comprising the steps of administering to a patient in need thereof a composition comprising an effective amount of a plant extract from the fruit and/or seed of *Buchholzia coriacea*. The Examiner further asserts that Burkill discloses a plant extract because the plant "is either grounded and/or boiled in hot water." Office Action, p. 3.

The Examiner has also rejected previously pending claims 1, 3-10, 12-15, and 17-21 under 35 U.S.C. § 103(a) as allegedly obvious over Burkill in view of Horino et al. (JP 200159632) and Doi et al. (JP 411322630). The Examiner acknowledges that Burkill does not disclose any auxiliaries or additives and to this end cites to Horino et al. and Doi et al.

Applicants respectfully submit that to the extent the Examiner's position relies on inherency, such reliance is improper. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" In re Robertson, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted). Here, despite the Examiner's assertions, Burkill is silent with respect to the use of an extract that has been extracted from *Buchholzia coriacea*. In fact, Burkill merely discloses that seeds are used for skin inflammation, and that "crushed" seeds are pasted on a women's belly during childbirth. With respect to "boiling," Burkill only discloses that in Southern Nigeria the fruit is boiled and eaten. Beyond this, however, Burkill does not disclose a method utilizing an **extract** of *Buchholzia coriacea*.

Nonetheless, while Applicants do not necessarily agree with the Examiner's reasoning for the anticipation rejection, claims 10 and 17 have been amended to further the prosecution of this application. More particularly, claims 10 and 17 now recite that the extract is obtainable by extracting at least a portion of the *Buchholzia coriacea* plant with a solvent selected from the group consisting of water, alcohol, and mixtures thereof to form a solution. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987). Here, claims 10 and 17 as presently amended now specifically recite that the extract is obtained by extracting at least a portion of the *Buchholzia coriacea* with a solvent. In contrast, Burkill merely discloses the use of a seed or boiling of fruit. Accordingly, Applicants respectfully submit that claims 10, 12, 13, and 17 are novel over Burkill.

With respect to the Examiner's obviousness rejection of the claims, Applicants respectfully submit that Horino et al. and Doi et al. do not cure the deficiency of Burkill. With respect to Horino et al., this reference discloses compositions comprising Ca and Mg hydroxides and/or oxides thereof. While Doi et al. discloses plant extracts of *Coptis japonica Makino* and/or *Phellodendron amurense Ruprecht* and an extract of *Yucca*, this reference is silent with respect to *Buchholzia coriacea*. Accordingly, Applicants submit that the "missing descriptive matter" is not "necessarily present in the thing described in the reference." In re Robertson, 169 F.3d at 745. None of the cited references disclose or suggest an extract of *Buchholzia coriacea* obtained by extracting at least a portion of the *Buchholzia coriacea* plant with a solvent selected from the group consisting of water, alcohol, and mixtures thereof. In fact, Burkill, the primary reference, merely recites that crushed seeds are pasted on a women's belly during childbirth, and that in Southern Nigeria the boiled fruit is eaten. Accordingly, Applicants respectfully submit that claims 1, 3-10, 12-15, and 17-21 are patentable over Burkill in view of Horino et al. and Doi et al.

In view of the above remarks, Applicants respectfully request reconsideration and withdraw of the instant rejections of the claims.

**CONCLUSION**

In view of the abovementioned amendments and remarks Applicants respectfully assert that this application is now in condition for allowance. The Examiner is invited to contact the undersigned counsel in order to further the prosecution of this application in any way.

Respectfully submitted,

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